IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

FIRST APPEAL NO.423 OF 2000.

Smt.Radhabai Digambar Mane : Appellant.

versus

The Municipal Corporation of

Greater Bombay : Respondent.

Mr.H.S.Murthy for the appellant.

Mr.J.J.Xavier for the BMC.

CORAM : D.G.DESHPANDE,J.

DATED : 26th APRIL 2005.

ORAL ORDER

1. Heard advocate Mr.Murthy for the appellant and, advocate Mr.Xavier for the Corporation. This appeal is filed by the original plaintiff whose suit came to be dismissed. The advocate for the BMC pointed out at the out set that the structure, in respect of which the suit is filed, is demolished by the BMC on 17.2.2000 and nothing survive in this appeal. Mr.Murthy admitted that the structure has been partly demolished. But the advocate for the BMC

stated that it is fully demolished. Mr.Murthy further contended that the appellant may not press this appeal if she is given an opportunity to make a representation to the council on the basis of vital documents which could not be produced during trial.

2. So far as making the representation is concerned, there could be no objection. But I clarified to Mr.Murthy and, he accepted, that the liberty given to the appellant to make representation to the BMC on the basis of un-produced record and documents will be only to the extent of one representation to the council and whatever be the outcome that shall not be open to challenge before any forum or any court. Mr.Murthy has accepted this on behalf of his client. His statement across the Bar is accepted. His client/appellant is present in Court. He also accepted this position. Hence the order :-

:ORDER:

The appeal is allowed to be withdrawn as having becoming infructuous.

The appellant will be at liberty to make representation to the BMC i.e. Assistant Commissioner, P North Ward, Mumbai on the basis of the documents which could not be produced before the trial Court. If such a representation is made, the BMC will be decided it as early as possible within four months uninfluenced by the trial Court's order.

Representation to be made within three weeks from today. It should be decided within four months thereafter.

However, the undertaking of the appellant is accepted that the decision taken by the BMC upon his representation shall be final and that it shall not open to challenge before any forum or any court.

Right to make representation is given to the appellant only on humanitarian ground and not because of any legal right recognized by this Court.

No order as to costs.

[D.G.DESHPANDE]

26/04/2005 JUDGE.